

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

MARIO DE LOS SANTOS,

Petitioner,

v.

LORIE DAVIS-DIRECTOR TDCJ-CID¹,

Respondent.

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CIVIL ACTION NO. 6:18-CV-00033-C

ORDER TO SHOW CAUSE, NOTICE, AND INSTRUCTIONS TO PARTIES

A petition for writ of habeas corpus has been filed in this Court pursuant to 28 U.S.C.

§ 2254. Accordingly, it is ORDERED as follows:

RESPONDENT'S ANSWER: Respondent is directed to file an **answer** to Petitioner's petition pursuant to Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts within sixty (60) days from the date of this Order. **No extensions will be granted.**

Respondent shall raise by way of her **answer** any appropriate defenses that she wishes to have the Court consider, including, but not limited to, exhaustion, statute of limitations, and successive petition. All applicable issues **must** be raised in the **answer** filed by Respondent.

Please note: Pursuant to Rule 5(c) to the extent that Respondent relies on (i.e., cites to) portions of the state court records in her answer and any brief filed therewith, such portions of

¹Pursuant to Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts, "the state officer having custody of the applicant shall be named as respondent." Though Petitioner is currently in confined in the Bureau of Prisons (BOP), he challenges a conviction for which it appears he is either on parole or serving concurrently with a federal sentence. As such, Petitioner appears to be in the constructive custody of the Director of Texas Department of Criminal Justice (TDCJ). Accordingly, the caption of this case has been changed to reflect the proper party respondent to the instant action is Lorie Davis, the Director of the Texas Department of Criminal Justice, Correctional Institutions Division. Further, the Advisory Committee Note following Rule 2 provides "[t]he attorney general is in the best position to inform the court as to who the proper party respondent is." In the event Lorie Davis is not the proper respondent in this civil action, the Attorney General may move for a substitution of the proper party.

the state court records relied on and/or cited to shall be designated as exhibits and included in a separate appendix filed simultaneously with the answer and any brief filed therewith.

Respondent shall mail a copy of the answer, together with a copy of any supporting brief filed therewith and an appendix containing the above-mentioned exhibits, to Petitioner at the address set out in Petitioner's pleadings or to his attorney of record, if any. Respondent shall file a certificate with the Clerk evidencing such service.

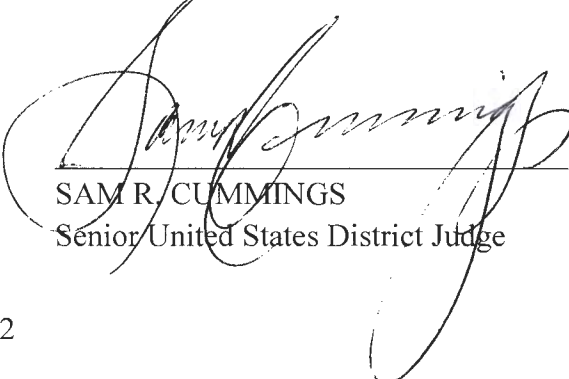
RECORDS: In addition to the State Court records included in the appendix described above, all records **must** be filed with the Clerk within sixty (60) days from the date of this Order.

PETITIONER'S RESPONSE: Pursuant to Rule 5(e), Petitioner may file a response to Respondent's answer within thirty (30) days from the date shown on Respondent's certificate of service. Petitioner's response must be limited to the arguments raised by Respondent and **shall not include any new allegations of fact or new grounds for relief**. Petitioner shall mail a copy of any response to counsel for Respondent and shall file a certificate with the Clerk evidencing such service.

SERVICE OF PETITION AND ORDER: Copies of the petition, attachments, supporting brief, if any, all orders and other documents filed in this action shall be served electronically upon the Texas Attorney General as Counsel for Respondent and shall be directed to the attention of Edward Marshall, Chief, Criminal Appeals Division, Office of the Attorney General of Texas, Austin, Texas. *See* Fed.R.Civ.P. 5(b)(2)(E).

The Clerk shall transmit a copy of this Order to Petitioner or his attorney of record.

Dated October 24, 2018.


SAM R. CUMMINGS
Senior United States District Judge